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In re Application of:	:	
Shinjiro OGITA, et al.	:	DECISION ON PETITION UNDER
Application No.: 10/521,244	:	37 CFR 1.181
Filing Date: January 14, 2005	:	
Attorney's Docket No.: KSM-0228	:	
For: PROCESS FOR PRODUCING A	:	
DECAFFEINATED COFFEE PLANT	:	
BY GENETIC RECOMBINATION	:	

This decision is issued in response to applicants' "Reply To Notification Of Defective Response" filed November 23, 2005, treated herein as a petition under 37 CFR 1.181 to treat the present application as a filing under 35 U.S.C. 111(a). No petition fee is required.

BACKGROUND

On July 16, 2003, applicants filed international application PCT/JP2003/009008. The international application claimed a priority date of July 16, 2002 and designated the United States. On January 22, 2004, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., January 16, 2005.

On January 14, 2005, applicants filed a Transmittal Letter requesting entry into the national stage in the United States under 35 U.S.C. 371, accompanied by, among other materials, payment of the basic national fee and an English translation of the specification.

On August 03, 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring submission of a translation of the international application, an oath or declaration in compliance with 37 CFR 1.497, and the processing fee and surcharge required for filing these materials later than thirty months after the priority date.

On August 18, 2005, applicants filed a "Response To Notification Of Missing Requirements" that included, among other materials, an executed declaration and payment of the required surcharge and processing fee.

On October 25, 2005, the DO/EO/US mailed a "Notification Of Defective Response" (Form PCT/DO/EO/916) indicating that a proper translation into English of the international application was required. The Notification indicated that the filed translation was defective because the number of claims was not the same as the number of claims present in the international application.

On November 23, 2005, applicants filed the "Reply To Notification Of Defective Response" considered as a petition herein. This submission requests that the application be treated as a filing under 35 U.S.C. 111(a), rather than 35 U.S.C. 371.

On April 19, 2006, the DO/EO/US mailed a "Notification Of Abandonment" (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a proper response to the Notification Of Missing Requirements.

DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). See 37 CFR 1.495(g):

The documents and fees submitted ... must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

In addition, section 1893.03(a) of the MPEP states the following:

If there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a).

The English language specification filed by applicants herein on January 14, 2005 stated that "[t]his application is a continuation-in-part application of International Application PCT/JP2003/009008 (not published in English) filed July 16, 2003." This statement in the specification is inconsistent with the intent to enter the National State under 35 U.S.C. 371. Accordingly, the original papers filed on January 14, 2005 are properly treated as a filing under 35 U.S.C. 111(a).

CONCLUSION

Applicants' petition to convert the application from a national stage application under 35 U.S.C. 371 to an application filed under 35 U.S.C. 111(a) is **GRANTED**.

The Notification Of Missing Requirements mailed August 03, 2005, the Notification Of Defective Response mailed October 25, 2005, and the Notification Of Abandonment mailed April 19, 2006, all of which were based on the present application being treated under 35 U.S.C. 371, are all hereby **VACATED**.

The application is being forwarded to the Office Of Initial Patent Examination (OIPE) for further processing as an application filed under 35 U.S.C. 111(a) with a filing date of January 14, 2005.

A handwritten signature in black ink, appearing to read 'RM Ross', written in a cursive style.

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